D.B. CIVIL WRIT PETITION NO.4103/2005

B.N. Kasana Vs. 1. Central Administrative Tribunal,Jodhpur.
2. Union of India
3. Chief Engineer, North Western Railway, Jaipur.
4. Senior Divisional Engineer, Jodhpur
5. Sh. Sandeep Gemawat,

Date : 30.10.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. S.K. Malik for the petitioner.
Mr. Kamal Dave for the respondents.

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BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

Heard learned counsel for the parties.

This writ petition is directed against the order of Central Administrative Tribunal, Jodhpur Bench, Jodhpur dated 6.10.2004 as well as the order passed by the Senior Divisional Engineer(C), North Western Railway, Jodhpur, Rajasthan imposing punishment of compulsory retirement against the petitioner as a result of disciplinary proceedings held against him.

The only issue which is relevant for the present purpose is whether the impugned order of punishment bringing the end of the services of the petitioner by way of punishment has been passed by a competent authority.

The petitioner was appointed as AIOW vide order dated 18/19.7.1972 issued from the office of Chief Engineer, Establishment, Church Gate, Bombay appears to be signed by same official of the office signed for and on behalf of the Chief Engineer. In pursuance of this appointment order as AIOW the petitioner before posting was to undergo an examination at the end of prescribed period of training and he was further required to serve the railway for a minimum period of 5 years on successful completion of training. In pursuance of this appointment as AIOW, the petitioner was posted vide order dated 19th August, 1972 by the same office and he had worked in the Flood Organization under Executive Engineer after he was medically examined and found fit. We further find from the material placed on record that though in the first instance, the date of regular appointment of the petitioner as Assistant Inspector on works was stated to be 16.8.1973 in the order dated 10th March, 1974 issued from the office of Executive Engineer, Western Railway, Surendra Nagar showing his date of regular appointment 16.8.1973 on completion of one year. However, vide memorandum dated 24th February, 1977, the date of appointment as regular AIOW in the case of the petitioner was shown to be 16.2.1973 in the Office Memorandum dated 10.3.1974.

In pursuance of the relaxation granted by the Railway Board vide its letter dated 6.5.1975 that the condition of training of AIOW from 12 months to 6 months is relaxed in case of those, who were straightway posted in construction offices. As we have noticed since the petitioner had been

posted directly to the construction office vide order dated 16.8.1972 his date of appointment as AIOW has been stated to be 16.8.1972 and on completion of 6 months training on 16.2.1973 has been taken to be as regular appointment as AIOW.

The order of appointment remains the same that is to say the order dated 16/19.7.1972 as affirmed by the order dated 16.8.1972 that the candidate having been medically examined and found fit. It cannot be altered.

Under the Indian Railway Establishment Code Volume 1, 5th Edition – 1985 in its second reprint edition 2003, para 215 shows the authorities competent to make first appointment. Clause (b) of said para shows that Appointing Authority in the case of the first appointment in other office/ Project/ Organization where such office project or Organization is directly under the control of the Railway Board shall be the Head of such office/Project/ Organisation. It is not in dispute that the petitioner was appointed in the construction project directly under the control of Railway Board and the appointment of AIOW, therefore, could have been made only by the head of the office of the Chief Engineer himself. The appointment offered to the petitioner signed by other officials for and on behalf of Chief Engineer cannot but be an appointment by the Chief Engineer.

It is of significance that this petition arises out of punishment imposed as a result of disciplinary enquiry in

which the Senior Divisional Engineer, respondent No.3, who is officer subordinate or lower in rank than the Chief Engineer has passed that order. After the enquiry was conducted, Senior Divisional Engineer, respondent No.3 acting as disciplinary authority has passed an order of imposing punishment of compulsory retirement of the petitioner on 17.12.2003 which results in his removal from service prematurely.

For challenging that order, the petitioner has preferred Original Application No.309/2003, before the Tribunal and it was urged that in view of clear provisions of Article 311 (2) of the Constitution, impugned punishment by an Authority lower in rank to the Appointing Authority, is ultra vires and illegal. Apart from the above ground the order was also challenged on merits.

However, the Tribunal has dismissed the application on the ground that since the appeal against the order of Senior Divisional Engineer/C lies to superior authority the applicant should prefer an appeal before approaching directly to the Tribunal.

We have been told that in pursuance of the aforesaid order, during the pendency of the writ petition, the petitioner has also preferred an appeal before the appellate authority against the impugned order of punishment.

However, from the facts noticed above, we are of the opinion that the impugned order passed by the Senior Divisional Officer is apparently contrary to the constitutional guarantee contained in Article 311(2) which ordains that no person, who is member of civil service of Union of India service or a civil service of the State or serving under the Union or State shall not be dismissed or removed or reduced in rank by the authority subordinate to that by which he has been appointed. That being the position, the impugned order of punishment passed by the Senior Divisional Engineer, who is an officer subordinate to the Appointing Authority of the petitioner, being contrary to the constitutional guarantee under Article 311(2), could not have been allowed to continue particularly keeping in view that the order passed by the appellate authority would not have cured the defect of the order of removing the petitioner from service by officer by an authority, who is subordinate to the petitioner was appointed.

In that view of the matter, the order of punishment passed by the respondent No.3 against the petitioner and allowing it to continue by the Tribunal cannot be sustained. The petition deserves to be allowed on this ground alone and we do so.

Accordingly, the impugned order of punishment dated 17.12.2003 Annex.R/2 to the writ petition and Annex.A/1 of the original application before the Tribunal are quashed. However, no error of jurisdiction was there so far as holding of enquiry was concerned. The competent authority in terms of

the Constitutional guarantee will be free to proceed in pursuance of the enquiry report submitted by the enquiry officer and pass fresh order in accordance with the law after affording an opportunity of hearing to the delinquent officer.

The writ petition is accordingly allowed. There shall be no orders as to costs.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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